

WILLIAM A. SIGMAN

IBLA 82-28

Decided July 28, 1982

Appeal from decision of Prineville District Office, Oregon, Bureau of Land Management, rejecting application for right-of-way. OR-28107.

Set aside and remanded.

1. Federal Land Policy and Management Act of 1976:
Rights-of-Way--Rights-of-Way: Applications-- Rights-of-Way:
Federal Land Policy and Management Act of 1976

The grant of a right-of-way for construction of an access road under sec. 501 of the Federal Land Policy and Management Act of 1976 is discretionary. A decision exercising that discretion to reject an application may be set aside where the record on appeal discloses that factors cited as the basis for the decision are inconsistent with the facts and/or immaterial to a determination of the public interest.

APPEARANCES: Edward E. Sites, Esq., Madras, Oregon, for appellant.

OPINION BY ADMINISTRATIVE JUDGE GRANT

William A. Sigman has appealed from a decision of the Prineville District Office, Oregon, Bureau of Land Management (BLM), dated September 10, 1981, rejecting his application for a right-of-way, OR-28107, for construction of an access road to his property.

On July 22, 1981, appellant filed an application for right-of-way for a road, pursuant to section 501 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1761 (1976). The road, to be situated in the NE 1/4 NE 1/4 sec. 30, T. 14 S., R. 15 E., Willamette meridian, Crook County, Oregon, is intended to provide daily access from the O'Neil Highway to 127 acres of appellant's land, where he is raising cattle. Appellant intends to shift use of the land from rangeland grazing to a livestock feeding operation. The road would extend from an existing access road up and over the rim of the Crooked River valley. It would cross both public and private land.

Approximately 852 feet of the road would be located on public land, along the crest of the valley rim.

Appellant's application discloses that the purpose of the proposed road is to provide necessary access to the tract located above the valley rim to allow use of the land for feeding and calving cattle. Appellant contends that the proposed 1-mile road is the only feasible access route. The record discloses that the tract of land to which appellant seeks access via the right-of-way is separated physically from the rest of appellant's property by a steep cliff approximately 400 feet high. The record indicates that the only existing access is by a circuitous route about 11 miles long.

The September 1981 BLM decision rejecting appellant's application was based on an Environmental Assessment/Land Report (Land Report) prepared by a BLM realty specialist in August 1981. The primary reason for rejecting appellant's application was the fact that the proposed road would be located in a class II visual resource management (VRM) zone, as identified in the Prineville Vicinity Management Framework Plan (MFP). BLM concluded in its decision that the proposed road would be "inconsistent" with the VRM classification. Class II requires that changes in any of the basic elements of a landscape, *i.e.* form, line, color, and texture, caused by a management activity, should not be evident in the characteristic landscape. A contrast may be seen but should not attract attention. BLM concluded that the proposed road would be "highly visible" along approximately 1 mile of the O'Neil highway, although the visual impact would be mitigated by vegetative screening. In addition, BLM noted that the proposed road would be located in a "high visual impact area," as identified by the Bonneville Power Administration (BPA) in a final environmental impact statement (EIS) prepared in connection with the proposed construction of the Buckley-Summer Lake 500 KV transmission line through the same area. BLM also noted that the proposed road would traverse a steep slope, which the EIS stated should be avoided "wherever possible." ^{1/} In addition, the minimum grade of the proposed road (10 percent) would exceed county requirements for public dedication of a road (8 percent). Finally, BLM stated that a viable alternative to the proposed road would be the use of existing public and private roads, involving a distance of "less than 11 miles to get around the Crooked River valley rim, as opposed to about 1 mile on the proposed road."

BLM noted that in addition to providing access to appellant's land, the proposed road would also be used by the BPA in constructing and maintaining

^{1/} Specifically, the EIS stated at page 28:

"For geologic and soils resources, the best mitigation measure is to limit the extent of soil disturbances * * * keeping activities such as road construction cut and fill to a minimum. This would include locating and constructing access roads away from moderate to steep slopes and sensitive areas as much as possible. If access roads must be constructed on slopes, water bars are installed at appropriate intervals and exposed areas reseeded or stabilized."

the Buckley-Summer Lake 500 KV transmission line. ^{2/} However, overall, BLM concluded that the proposed road would not be in the "public interest."

In his statement of reasons for appeal, appellant contends that the Crooked River valley area is not a "pristine area," but, rather, is an area where transmission lines and access roads dot the landscape. Appellant submits a number of photographs taken in the vicinity of the proposed road, which depict numerous transmission towers and lines, an access road on the north side of the valley, and another access road along the base of the valley rim immediately below the proposed road. Both existing roads are clearly visible from the O'Neil highway. Appellant states that the transmission lines, which present a more "prominent" visual impact than the access roads, were determined by the EIS to have a visual impact which is "generally low," due to the "low" number of viewers and the "high" visual compatibility of the lines. In addition, the proposed road would be screened from the highway by the foreground hills and juniper trees. Finally, appellant states that the potential for soil erosion, due to the proposed road, is "proportionately decreased" where the road approaches the valley rim, due to the fact that "the road surface becomes almost exclusively rock." Appellant contends there is no "feasible" alternative to the proposed road.

[1] Under section 501 of FLPMA, *supra*, approval of a right-of-way by the Secretary is a "wholly discretionary matter." Nelbro Packing Co., 63 IBLA 176 (1982). A BLM decision rejecting an application for a right-of-way will ordinarily be affirmed by the Board when the record shows the decision to be based on a reasoned analysis of the factors involved, made with due regard for the public interest. *Id.* at 185. We believe, upon a careful review of the record, that BLM's decision to reject appellant's right-of-way application does not meet this standard. A decision rejecting a right-of-way application may be set aside on appeal where applicant offers evidence on appeal substantially controverting the grounds recited by BLM for rejection. See Patrick O. Brown, 55 IBLA 336 (1981).

The primary reason for BLM's decision to reject appellant's right-of-way application is the asserted inconsistency between the proposed road and the area's VRM classification. We do not question a management policy which seeks to protect visual resources. However, we question whether, in this case, BLM has properly considered the visual impact of the proposed road in light of that policy. BLM has not explained how the proposed road would be "inconsistent" with the area's class II VRM classification. Although there is little question that the proposed road would be visible from part of the surrounding area, it is hard to perceive how it could attract attention in view of the existing transmission lines, towers, and access roads. We fail to see how the proposed road would significantly detract from the scenic qualities of the area, especially in view of the already existing impacts.

^{2/} On appeal, appellant submits a letter from the Director, Division of Land Resources, BPA, dated Oct. 19, 1981, in which he asserts that the proposed road will result in a savings of \$17,500 in construction and maintenance costs for the Buckley-Summer Lake 500 KV transmission line.

BLM also invoked the potential for soil erosion as another reason for rejecting appellant's right-of-way application. However, BLM relied only on the general conclusion in the EIS that steep slopes should be avoided and does not appear to have studied the soil composition of the particular area to be crossed by the proposed road. Appellant asserts, on the other hand, that it is "exclusively rocky" and, therefore, erosion is not a problem.

BLM also noted that the proposed road would not satisfy the county specifications with respect to grade required for dedication to public use. The fact that a road does not qualify for dedication as a county highway does not preclude a finding that it is in the public interest. In addition to the clearly stated needs of appellant and the BPA for the road, the record indicates that users of other tracts of private land in close proximity stand to benefit from the access road.

Accordingly, it appears that BLM in finding that the right-of-way would be contrary to the public interest failed to consider certain material facts and placed undue significance on other facts. As suggested in the EIS (see note 1), special stipulations might be appropriate to minimize adverse impacts.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside and the case is remanded to BLM for further consideration.

C. Randall Grant, Jr.
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Edward W. Stuebing
Administrative Judge

